

82D CONGRESS }
2d Session }

HOUSE OF REPRESENTATIVES }

REPORT
No. 2420

AMENDING THE CIVIL AERONAUTICS ACT TO MAKE UNLAWFUL CERTAIN PRACTICES OF TICKET AGENTS ENGAGED IN SELLING AIR TRANSPORTATION

JULY 1, 1952.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. MACK of Illinois, from the Committee on Interstate and Foreign
Commerce, submitted the following

REPORT

[To accompany S. 2690]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 2690) to amend the Civil Aeronautics Act of 1938, as amended, to make unlawful certain practices of ticket agents engaged in selling air transportation, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

Under existing law the Civil Aeronautics Board has jurisdiction to require air carriers to desist from engaging in unfair and deceptive methods of competition in air transportation (sec. 411). The law also provides that it is a misdemeanor for an air carrier knowingly and willfully to furnish transportation at less than the lawful rates, or to grant rebates or other concessions (sec. 906 (d)).

The purpose of the proposed legislation is to bring ticket agents who are engaged in selling air transportation within the scope of these provisions.

PROVISIONS

The bill will amend sections 1, 411, and 902 (d) of the Civil Aeronautics Act. Section 1, as amended, will define ticket agents for the purpose of the act. Sections 411 and 902 (d), relating to unfair methods of competition, and providing penalties for violations of the act, will, as amended, extend their coverage to ticket agents.

JUSTIFICATION

The necessity for the proposed legislation is occasioned by the fact that a number of ticket agents have engaged in flagrant abuses and deceptions in the sale of air transportation to the great detriment of the public. For example, ticket agents have engaged in such practices as the following:

(1) Deceptive advertising and other public representations which induce the public to believe that the agent is an air carrier and to rely on such agent to provide the air transportation service offered when in fact the agent is not authorized to engage in air transportation but is depending upon the performance of the service by some authorized air carrier undisclosed to the prospective passenger and in many instances unknown to the agent at the time the representation is made or the same is consummated.

(2) Deceptive and misleading advertising and other public representation as to the quality and kind of service, cost, type and size of aircraft, times of departure and arrival, points served, route to be flown, stops to be made, and total trip time from point of departure to designation.

(3) Offer and sale of air transportation without regard to the rates, fares, and charges specified in the tariffs of air carriers represented, discriminating between passengers, charging some more and some less than lawful tariff rates, demanding and collecting extra improper charges which in some instances are exacted to make up the difference between the lower rate offered purposely as a "come-on" to bring the prospective purchaser to the agent's place of business and the correct rate which should have been advertised to the public.

(4) Selling air transportation on a reservation basis when the agent has no binding commitment with any air carrier to provide the service. In such instances the passenger is later informed that the flight will be delayed, or he finds upon arrival at the airport that there is no space for him or that there is no flight as represented. The passenger then must wait until the agent finally arranges for his passage on another flight or another carrier which may be hours or days later and may be at a higher fare or under less desirable circumstances or on less desirable types of aircraft than that represented at the time of sale.

(5) Falsely representing that passengers are directly insured in large amounts when in fact no such insurance is in force.

(6) Falsely representing that special "priorities" for reservations and special discounts are available, particularly for persons in military service, when in fact no such special considerations are available.

(7) Failure and refusal to make proper refunds when flights are not available or only partially completed.

These practices arose with the development of the irregular air-carrier operations after the close of World War II and have become more widespread and serious each year. The seriousness of the problem is indicated by the following articles by William Longgood which were printed in the Washington Daily News February 12 and 13, 1952:

SHARPIES NOT BOUND BY LAW—NONSKED ABUSES TRACED TO SHADY TICKET AGENTS

(By William Longgood)

Most of the ill will directed against nonscheduled airlines can be traced directly to dishonest ticket agents.

Take the man who bought a ticket to Boston. He was dined and taken to a show by the agent, but when he went to board the plane it never materialized.

Or the 50 servicemen stranded in New York when a nonskd failed to show up to take them to the west coast.

Or the agent who advertises flights to California for \$88, but when you go to buy he has only more expensive seats left.

Or the passenger who discovers he paid more for his ticket than the man beside him and less than the one in front.

Or the man who waited 6 months without getting a refund—and the multitudes who never got their money back.

Or countless passengers who answered ads or four-engine luxury liners and found only two-engine planes and overcrowded bucket seats.

Against these and other abuses flows a torrent of complaints—almost always directed against the nonsked airlines. And herein lies the heart of the confusion.

Ticket agencies are not owned by the nonsked carriers, at least not on the record. Otherwise they would be under Civil Aeronautics Board control. But many agencies take names or design their ads to mislead the public into believing they are carriers. Carriers are the companies that own and fly the planes.

No one has jurisdiction over the agencies. They are neither licensed nor registered. For the dishonest agents this has let them gouge, mislead, and fleece the public, as well as the carriers.

SELLING PASSAGE

No one is more eager to drive the cheats out of business than the honest agents and carriers. They have applauded requests for legislation to license them. The CAB wants Congress to put ticket agencies under its control.

But, meanwhile, unscrupulous agents are trying to squeeze out the last buck before they're ousted. One of the gimmicks they've made capital of is the method of selling passage on nonskeds. It works like this:

Most of the big nonsked lines are represented by a general agent. His job is to fill the line's departing planes with fares. But if he can't sell enough tickets himself, he notifies other agencies of the plane's approximate departure time and they also sell passages.

EXCHANGE ORDER

Only the general agent or an authorized travel agency can sell tickets for the line he represents. Other agents sell an XO—exchange order. This is merely a token or promissory note for a ticket. It contains no commitment that the flight will take off; it may even state the order isn't a flight guaranty.

The passenger must take his XO to the airport where the nonsked, theoretically, at least, exchanges it for a ticket. But here are some of the surprises he may run into:

NO PROSECUTION

Some 100 people have been sold seats on a 50-passenger plane.

The line won't honor the XO because the agent owes the carrier money.

The XO costs less than the tariff (the fare authorized by the CAB) and our passenger will have to ante up the difference.

The flight will be delayed a few hours (or days), which generally means until the agent finds more passengers or a plane to haul them.

All of these things can and do happen. They happen with unhappy regularity. And agents get away with them. Why?

Because of a curious quirk in the law that stipulates a person can't be criminally prosecuted for failing to deliver on a promise to supply a ride and for failure to refund the money. The buyer's only recourse is a civil court action, which could cost more than the refund's value.

So the dishonest agents get richer and the entire nonsked field gets another black eye.

Most of the chiseling agents are independents who represent no line. How many there are is anybody's guess.

AUCTIONS LOAD

One of their favorite tricks is to sell a planeload of fares and then shop for a carrier to deliver it while the passengers wait. In one notorious case an agent sold 50 passengers to Puerto Rico at \$60 each, then he had carriers bid for the job. The low bidder transported the passengers at \$11 a head, the agent pocketing the rest.

The CAB investigated but couldn't take action; full tariff rates had been paid by the passengers.

MISLEADING AND PHONY BAIT—ANYTHING GOES IN SHADY NONSKED AGENCY ADS

(By William Longgood)

Fly from California to New York for \$13.20.

That's what the ad said. But in tiny letters under the bold figures was this notation; "Tax." And under that: "Plus fare." In almost invisible print was the admission: "Nonscheduled."

Misleading and phony advertising is the bait with which dishonest ticket agencies have helped skyrocket nonscheduled flying to an estimated business of \$60,000,000 a year—and made lots of enemies for the industry.

This is one phase of this fabulous business the Civil Aeronautics Board now is investigating to determine if it has a place in aviation today.

Better Business Bureau files are loaded with complaints against ticket agencies who misrepresented what the carriers—the companies that own and fly the planes—offer. Many agencies have falsely advertised themselves as carrier airlines. They spend huge amounts promoting business—most of it in radio advertising with a midway flavor.

One agency, before being slapped down by New York's BBB made these claims:

"Regularly scheduled departures." (Nonskeds aren't allowed to fly on schedule.)

"The most luxurious superflights." (Crowded bucket seats.)

"Delicious meals." (Box lunches.)

"No lower Government fare." (His was \$88 to California; there were others for \$77.)

"Dependable service" (BBB called it extremely undependable). The same agency also implied it was a carrier.

ADVERTISING CODE

The agency toned down its ads after the bureau had set up a code of advertising for ticket agencies.

The better-business bureau's records also show how another agency sneaked around a CAB order preventing nonsked flights from carrying passengers out of the United States. It advertised a flight to Rome at a bargain fare, then flew the cut-rate pilgrims to Canada by scheduled airline. From there they were transferred to a nonsked plane for the trip abroad.

Dishonest agencies, unlicensed and uncontrolled, have been parasites on the industry since it started after World War II. Despite efforts of their honest brothers to clean house they have continued to bleed and sabotage the nonskeds.

PATRONS CLIPPED

They have exploited loopholes in the law mercilessly to get away with their unscrupulous practices. And with two exceptions they've got away with it.

The usual arrangement is for agents to sell passage on a commission of from 5 to 35 percent. But some "sharpies" have got up to 80 percent from hard-put carriers.

CAB has asked the carriers to accept passengers only from agents with whom they have contracts and to police the agents themselves. But to date this hasn't proved too effective.

LINKS MASKED

One reason may be because some carriers own the agencies representing them but mask the alliance to avoid responsibility for the agent's acts. This dark suspicion is being looked into as part of the CAB's current investigation of the industry.

During the last 2 years honest agencies have tried to clean their ranks by forming associations and adopting codes of ethics and advertising standards to end illegal practices. A better business bureau official recently noted that "the volume and basis of complaints have diminished but have not yet been completely obliterated."

The abuses of certain ticket agents serving the irregular air carriers was discussed by the Senate Committee on Small Business in its annual report for 1951. On page 247 that committee reported in part as follows:

An important aspect of the nonscheduled problem is the irresponsible way in which the public has often been handled. * * * Part of the explanation lies in the fact that the nonscheduled airlines must deal through ticket agencies * * * from an economic standpoint they are forced to rely on independent ticket agents to pool their services. Many of these agents have engaged in highly unethical business practices. Fortunately better business bureaus in many cities have cracked down on some of the more flagrant concerns * * *.

Since July 1, 1948, the Civil Aeronautics Board has received 538 informal complaints from members of the public, including many from Members of Congress, better business bureaus, and local agencies, regarding such practices, and is now receiving several hundred such complaints each year. During the calendar year 1951 alone the Board states that it received approximately 200 complaints from members of the public concerning such improper activities and practices which have resulted in mistreatment, great inconvenience, financial loss, and other hardships. Information indicates that many other such complaints which did not come directly to the Board's attention were received during the same period by the Federal Trade Commission and the better business bureaus and the local law-enforcement agencies in a number of cities.

The Board states that it has used its existing powers to the full in an effort to stamp out these practices. Among the steps which the Board has taken are the following:

(1) Adopted regulations applicable to the air carriers regarding their relationships with ticket agents, which regulations require (a) that agreements between carriers and agents be reduced to writing and filed with the Board, (b) the issuance of tickets of the carrier to the passenger at the time of sale, (c) that settlement between carriers and agents be made on basis of written invoices showing specified information, and (d) the submission of samples of advertising material of the carrier.

(2) Encouraged action by and cooperated with better business bureaus, the Federal Trade Commission, and local law-enforcement agencies.

(3) Attempted informally by letter and conferences to induce ticket agents voluntarily to discontinue such practices.

(4) Attempted to discourage these practices by publicizing them in formal enforcement proceedings and investigations involving air carriers.¹

Notwithstanding these Board actions, the improprieties and abuses on the part of ticket agents continue unabated and the Board is unable to deal effectively with the situation.

¹ *Investigation of Large Irregular Carriers*, Docket No. 3450, instituted August 11, 1948; *Standard Air Lines Inc., Non-certificated Operations*, Docket No. 3357, decided June 20, 1949; *American Air Transport and Flight School, Inc., Non-certificated Operations*, Docket No. 3405, decided February 15, 1950; *Viking Airlines et al. Non-certificated Operations*, Docket No. 3447, decided June 5, 1950; *Trans American Airways, Inc., and Great Lakes Airlines, Inc.*, Docket No. 4161, decision pending; *New England Air Express, Inc.*, Docket No. 5182, action pending.

Because such practices are widespread and because the Board, under its present statutory powers, lacks the ability to curb them, many members of the public are being subjected to mistreatment, great inconvenience, and other hardships against which the traveling public should be protected. Moreover, the continuation of such treatment has and will retard public acceptance of air transportation, discourage the growth and development thereof, and hinder the performance by the Board of its duties and responsibilities under the act, all of which adversely affects interstate commerce in particular and the public interest generally.

If the proposed amendments are adopted, so as to grant the Board the power it now lacks, it can attack these improper activities directly by the issuance of cease-and-desist orders after notice and hearing in administrative hearings and by seeking injunctions and the imposition of fines in the United States district courts. In addition, the existence of such formal sanctions should enable the Board to accomplish a great deal toward obtaining voluntary compliance through informal enforcement action.

The proposed legislation was drafted and sponsored by the Civil Aeronautics Board. Attached to this report are letters addressed to Chairman Robert Crosser from Donald W. Nyrop, Chairman of the Civil Aeronautics Board, and from A. Devitt Vanech, Deputy Attorney General, as well as a communication signed by Thomas W. Davis, Acting Secretary of Commerce, and addressed to Hon. Edwin C. Johnson, chairman of the Senate Committee on Interstate and Foreign Commerce.

EXPLANATION OF BILL BY SECTIONS

Section 1 of the bill amends section 1 of the Civil Aeronautics Act of 1938 by inserting a definition of "ticket agent." Paragraph (32) is renumbered as (33). "Ticket agent" is defined as any person, not an air carrier or a foreign air carrier or an employee thereof, who, as principal or agent, sells or offers for sale any air transportation or negotiates for, or holds himself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts or arranges for, such transportation.

Section 2 of the bill amends section 411 of the Civil Aeronautics Act of 1938, as amended, which relates to "Methods of competition." The term "ticket agent" is added to the section so as to authorize the Board to investigate and determine whether any ticket agent is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. The Board is authorized to order a ticket agent found to be engaged in such practices or unfair methods of competition to cease and desist therefrom.

Section 3 of the bill amends section 902 (d) of the Civil Aeronautics Act of 1938, as amended, relating to "Granting rebates." This paragraph of the section is amended by adding the term "ticket agent" so that it becomes unlawful for a ticket agent, as well as, an air carrier or foreign air carrier or its officer agent, employee or representative, to knowingly or willfully grant or give any rebate or other concession in violation of the act. The paragraph provides that a person guilty of doing so shall be deemed guilty of a misdemeanor and, upon conviction, shall be subject for each offense to a fine of not less than \$100 and not more than \$5,000.

Section 4 of the bill provides that nothing contained in the proposed act shall be construed to enlarge or extend the jurisdiction of the Civil Aeronautics Board over transportation not subject to the Civil Aeronautics Act of 1938, as amended.

Section 5 of the bill provided that the proposed act will become effective upon enactment.

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as passed the Senate, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

THE CIVIL AERONAUTICS ACT OF 1938

TITLE I—GENERAL PROVISIONS

SEC. 1. * * *

(32) *'Ticket agent' means any person, not an air carrier, or a foreign air carrier and not a bona fide employee of an air carrier or foreign air carrier, who, as principal or agent, sells or offers for sale any air transportation, or negotiates for, or holds himself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts or arranges for, such transportation.*

[(32)] (33)

TITLE IV—AIR CARRIER ECONOMIC REGULATION

METHODS OF COMPETITION

SEC. 411. The [Authority] Board may, upon its own initiative or upon complaint by any air carrier [or], foreign air carrier, or *ticket agent*, if it considers that such action by it would be in the interest of the public, investigate and determine whether any air carrier [or], foreign air carrier, or *ticket agent* has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. If the [Authority] Board shall find, after notice and hearing, that such air carrier [or], foreign air carrier, or *ticket agent* is engaged in such unfair or deceptive practices or unfair methods of competition, it shall order such air carrier [or], foreign air carrier, or *ticket agent* to cease and desist from such practices or methods of competition.

GRANTING REBATES

SEC. 902. * * *

(d) Any air carrier [or], foreign air carrier, or *ticket agent*, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, offer, grant, or give, or cause to be offered, granted, or given, any rebate or other concession in violation of the provisions of this Act, or who, by any device or means, shall, knowingly and willfully, assist, or shall willingly suffer or permit, any person to obtain transportation or services subject to this Act at less than the rates, fares, or charges lawfully in effect, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be subject for each offense to a fine of not less than \$100 and not more than \$5,000.

CIVIL AERONAUTICS BOARD,
Washington 25, May 21, 1952.

Hon. ROBERT CROSSER,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.

DEAR MR. CROSSER: This is in reply to your letter of May 14, 1952, asking the Board for a report on S. 2690 an act to amend the Civil Aeronautics Act of 1938,

as amended, to make unlawful certain practices of ticket agents engaged in selling air transportation, and for other purposes.

Except for the addition of two new sections, this act is identical to H. R. 7218 which the Board strongly endorsed in its letter to you of April 18, 1952. The new sections, to which the Board has no objection, read as follows:

"SEC. 4. Nothing contained in this Act shall be construed to enlarge or extend the jurisdiction of the Civil Aeronautics Board over transportation not subject to the Civil Aeronautics Act of 1938, as amended.

"SEC. 5. This Act shall be effective upon enactment."

It is the Board's understanding that section 4 was added to make certain that the Board's authority would not be extended to cover the activities of ticket agents in the sale of surface transportation, as distinguished from air transportation. The Board believes the addition is unnecessary, but has no objection to it. It is the Board's understanding that section 5 was added to make certain that the act should come into operation upon its enactment and not have any retroactive effect. With respect to this also the Board believes the addition is unnecessary, but has no objection to it.

The Board believes that this legislation is urgently needed and recommends prompt passage of S. 2690.

Sincerely yours,

DONALD W. NYROP, *Chairman.*

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, May 27, 1952.

HON. ROBERT CROSSER,

*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.*

MY DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (S. 2690) to amend the Civil Aeronautics Act of 1938, as amended, to make unlawful certain practices of ticket agents engaged in selling air transportation, and for other purposes.

The bill would amend section 1 of the Civil Aeronautics Act of 1938, as amended (49 U. S. C. 401) by adding a new paragraph defining the term "ticket agent." The bill would also amend section 411 of the act (49 U. S. C. 491) prohibiting unfair or deceptive practices or unfair methods of competition in air transportation, and section 902 (d) (49 U. S. C. 622 (d)) making unlawful the granting of rebates or concessions in the sale of air transportation, so as to bring "ticket agents" within the scope of those sections.

This Department is advised that the bill was introduced at the request of the Civil Aeronautics Board in order to combat the activities of a number of ticket agents who have engaged in flagrant abuses and deceptions in the sale of air transportation to the detriment of the general public. It is understood that the Board has attempted to correct such practices by resort to its existing authority, and by proceeding through the Federal Trade Commission and other enforcement agencies. In this activity the Board has been but partially successful and believes that the limited additional authority proposed to be granted by the bill would enable it to proceed with greater efficiency in such matters. Under existing law, it has often been necessary for the Board to attempt to prove that persons engaged in the sale of air transportation are covered technically by the classification "indirect air carrier" as such term is defined in the act. In a number of instances, this has placed a substantial burden on the Board and the effort to restrain such unwarranted activities by ticket agents has not been altogether successful.

The ills within the field of air transportation sought to be cured by the proposed legislation are not new to the transportation industry. The corrective action proposed to be taken is also not without legislative precedent. A review of the legislative history of the Motor Carrier Act of 1935, now part II of the Interstate Commerce Act (49 U. S. C. 301, et seq.), discloses that similar deceptive and abusive practices by persons engaged in the sale of transportation by motor vehicle led to the enactment of Federal legislation regulating such persons and their activities (secs. 204 and 211 of the Interstate Commerce Act, 49 U. S. C. 304, 311; *Acme Fast Freight, Inc., Com. Car. Application*, 2 M. C. C. 415, 435 (1937); *Regulation of Transportation Agencies*, S. Doc. 152, 73d Cong., 2d sess.; *Coordination of Motor Transportation*, 182 I. C. C. 263, 279-280 (1932); *Motor Bus and Motor Truck Operation*, 140 I. C. C. 685, 702, 703 (1928)).

The Department of Justice would have no objection to the enactment of the measure.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

A. DEVITT VANECH,
Deputy Attorney General.

APRIL 14, 1952.

Hon. EDWIN C. JOHNSON,
*Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington 25, D. C.*

DEAR MR. CHAIRMAN: This letter is in reply to your request of February 20, 1952, for the views of this Department concerning S. 2690, a bill to amend the Civil Aeronautics Act of 1938, as amended, to make unlawful certain practices of ticket agents engaged in selling air transportation, and for other purposes.

This bill would amend the Civil Aeronautics Act of 1938 by bringing ticket agents who are engaged in selling air transportation within the scope of section 411 ("Methods of competition") and section 902 (d) ("Granting rebates"). If legislation of this type is enacted, the Board's jurisdiction to require air carriers to desist from engaging in unfair and deceptive methods of competition in air transportation would be extended to ticket agents by inclusion of reference to the sale of air transportation as well as air transportation itself. Moreover, ticket agents, together with air carriers, would be prohibited from knowingly and willfully furnishing transportation at less than the lawful rates or granting rebates or other concessions.

It appears that a number of ticket agents have engaged in flagrant abuses and deceptions in the sale of air transportation, to the great detriment of the public. The Civil Aeronautics Board says that it has received 538 informal complaints from the public regarding ticket agents' practices since July 1, 1948. Despite certain actions taken by the Board, including issuance of regulations applicable to air carriers regarding their relationships with ticket agents, improprieties on the part of ticket agents continue unabated. The additional powers set forth in this act would provide for direct attack on such improprieties by the issuance of cease and desist orders and by seeking injunctions and the imposition of fines in United States district courts.

This Department favors this legislation on the grounds, first, that the public interest requires additional regulation of the activities of ticket agents engaged in selling air transportation and, second, the Civil Aeronautics Board requires certain powers of control over these agents in order to discharge its duties and responsibilities under the Civil Aeronautics Act of 1938. However, the Department makes two reservations concerning our endorsement of this proposal.

We feel that appropriate consideration should be given the question of the relationship between the regulatory role and jurisdiction of the Federal Trade Commission and the Civil Aeronautics Board with respect to ticket agents, since the legislation proposed here would in effect definitely grant certain regulatory powers to the Civil Aeronautics Board which have been within the purview of the Federal Trade Commission. The position of ticket agents in relation to more than one type of transportation should be considered from the standpoint of the proper regulatory agency for control purposes. The definition of "ticket agent" embraces all persons who sell air transportation. Thus this would give the Civil Aeronautics Board certain regulatory control over agents which sell joint transportation via air and surface carriers. Since the latter are subject to regulatory bodies other than the Civil Aeronautics Board, it might possibly be desirable to add language to the proposed bill which would indicate more clearly the relative jurisdictional sphere of the Board respecting ticket agents.

Subject to the reservations noted above, this Department recommends enactment of S. 2690.

Due to the pressure of time, we have been unable to secure clearance from the Bureau of the Budget on this report.

If we can be of further assistance in this matter, please call upon us.

Sincerely yours,

THOMAS W. S. DAVIS,
Acting Secretary of Commerce.

